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Cc: "Nawi, David" [David_Nawi@ios.doi.gov]; Belin, Letty" [Letty_Belin@ios.doi.gov]; Connor, Michael L" [MLConnor@usbr.gov]
Bcc: CN=Tom Hagler/OU=R9/O=USEPA/C=US[]
From: CN=Karen Schwinn/OU=R9/O=USEPA/C=US
Sent: Sat 12/18/2010 8:34:32 PM
Subject: Re: ANPRM

Thanks for relaying your concerns, Don. And thank you for making a rainy day trip to SF. We enjoyed the conversation.

I agree that some of the water users, and perhaps DWR, may react as you suggest to the ANPR. Here's our perspective: The Clean Water Act requires an ongoing review of whether the physical, chemical and biological characteristics of all waters of the United States are adequate to protect the aquatic resources. In an estuary, that will include an evaluation of the salinity regime – the physical or chemical characteristic that defines an estuary. The ANPR is actually a small step in that review, a step that is consistent with the encouragement we've given to the State Water Board to move forward on the deficiencies they've identified in their water quality control plan for the Delta. I say a "small step" because, as we discussed, the ANPR only identifies the problems; it does not propose a solution at this time.

We think we have fairly presented the available science on these issues. The draft has been reviewed by a large number of folks at both state and federal sister agencies. And the entire point of the ANPR is to see whether we missed anything, so all parties will be having their chance to opine on the science. There are a lot of balls in the air in California water. That is, there are multiple planning and regulatory processes ongoing. The BDCP is one of those. The State Board review process, which predated the BDCP and has its own timeline and requirements under the Board's Strategic Plan, is another. The Delta Stewardship Council Delta Plan is a new, third process happening simultaneously. The participants in the BDCP cannot expect these other processes to freeze in place as the now four- year old BDCP planning effort continues. Our obligation as federal agencies is to carry out each of our statutory mandates as effectively as possible, and to collectively try to reconcile these different processes so that everyone is pulling in the same direction and meeting their obligations. Perhaps a discussion of these multiple forums would be a good topic for our next meeting.

I will work with David Nawi and Letty on how best to reflect your concerns in the ANPR documents. Thanks again for sharing your concerns with us - it will help us all be better prepared.. - Karen

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Cc: Karen Schwinn/R9/USEPA/US@EPA
Date: 12/17/2010 03:43 PM
Subject: ANPRM

All,

I seemed to stir up a bit of a fuss on EPA's ANPRM that is currently moving through the approval process for posting in the federal register (I believe this is the status). I had a chance to share my concerns with Karen and other EPA staff in San Francisco this morning during a meeting we had scheduled for some time to discuss a wide range of EPA/BOR issues we share in common. Karen, thank you for your time. You were very generous to set aside most of your morning. My concern is fairly simple. The ANPRM is for the purpose of gathering information related to several water quality related issues that affect the Delta and is being advanced by EPA as part of the Federal Interim Action Plan. The issues in the ANPRM include ammonia, fall x-2, lower San Joaquin River Flows and associated fish corridors, and other contaminants like selenium. I had a chance to join the agency briefing by EPA on Wednesday (I believe). It struck me that raising fall x-2 and Lower San Joaquin flows right now as part of a EPA rule making process will be turned back on the Secretary and the administration given their contentious nature in the BDCP process and the recent commitment by the administration to this process. I believe it will be characterized that the administration is skirting the BDCP process to get the outcomes we want related to these issues. At a minimum we need to be prepared to explain how the ANPRM advances the BDCP process. Also, given Judge Wanger's recent ruling on fall x-2 and the ongoing litigation on Lower San Joaquin flows (I/E ratio) I believe we will be accused of using the Clean water Act to get what we could not get through ESA and this will be tied to the Secretary's commitment to the BDCP. I have no strong view on the merits of the ANPRM and it is not really a BOR issue, I am more concerned that the Department and the administration has thought through how these may be tied together. I may be getting overly suspicious (some would say cynical) in my old age and I offer this for what it is worth. I would be happy to discuss this with anyone but have pretty much exhausted my insight. If I am off the mark, I am sorry for adding any commotion to your lives.

Don

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